**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 1296 of 1993**

**For Approval and Signature:**
**HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**SANDHA HARI NANJI - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**
MR YS MANKAD for Petitioner(s) : 1,
MR AY KOGJE AGP for Respondent(s) : 1 - 2.

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 18/01/2007**

**ORAL JUDGMENT**

1. Heard Mr.B.Y. Mankad, learned counsel for the petitioner and Mr.A.Y.Kogje, learned Assistant Government Pleader for the respondents- State.

2. Being aggrieved by the order dtd.13/1/1992 passed by the Collector, Kutch canceling certain allotments which

were made in favour of the petitioner on 3/12/1981, the petitioner is before this Court.

3. It appears that after certain land vested in the Government, which was declared as surplus under the provisions of Gujarat Agricultural Land Ceiling Act, certain applications were invited from number of persons. The petitioner also made an application for allotment or settlement of some land in his favour. After grant of the application of Sadha Hari Nanji - the petitioner, land admeasuring 11 Acres of Part of Survey No.45 was allotted and settled in favour of the petitioner. The land was mutated in favour of the petitioner and the entry was, thereafter, certified. It appears that almost after 11 years, the Collector either on the strength of his personal knowledge or on some information received by him, issued a notice to the petitioner to show cause that why allotment made in his favour be not cancelled, because he did not belong to the backward class. The petitioner showed the cause, but unfortunately could not convince the learned Collector, who, in his turn, cancelled the allotment.

4. Mr.Mankad, learned counsel for the petitioner, placing reliance upon the order of allotment dtd.3/12/1981

submits that the order was not made in favour of the petitioner on a foundation that he belonged to other backward class. According to him, the applications from agricultural labourer and the persons belonging to backward class, were received and after scrutinizing the applications, the land was settled in favour of the said applicants. Placing reliance upon a publication of the year 1992 issued by the Mamlatdar, Rapar, though subsequent to the order of the allotment, he submits that this notification also does not say that the land would be allotted to the persons who belong to backward class. He submits that without making an inquiry into the application submitted by the petitioner, the Collector simply on the ground that the petitioner did not belong to backward class, could not cancel the order of allotment.

5. Unfortunately, the State Government was not advised to file its counter affidavit and as such, there is no counter affidavit on the records.

6. The allotment order dtd.3/12/1981 was sought to be interpreted by both the parties. Mr.Mankad, learned counsel for the petitioner says that the applications were received from agricultural labourer and from the people

belonging to backward class, but Mr.Kogje, learned Assistant Government Pleader says that the applications were shown to have been received from the agricultural labourer who belonged to the backward class.

7. As no inquiry into this fact has been made by the Collector, it would not be possible for this Court to make any comment on that part of the order of the allotment.

8. The Collector, certainly, was obliged to call for the application of the petitioner and was, then, to examine that the petitioner asked for settlement of the land in his favour projecting himself to be an agricultural labourer or a person belonging to backward class or as an agricultural labourer, who belonged to the backward class. In absence of such an inquiry, the allotment made in favour of the petitioner could not be cancelled.

9. The order passed by Collector deserves to and is accordingly quashed. The matter is referred back to the Collector for making an inquiry that whether the petitioner was rightly allotted the land in his capacity as agricultural labourer or he prayed for allotment of the land as a person belonging to backward class or as an agricultural labourer who belonged to the backward class.

10. The petitioner shall appear before the Collector, Kutch on 19/2/2007 with a copy of this order. The Collector shall allow the petitioner to submit his additional statement / written statement and thereafter shall make an inquiry, after summoning the original records, he shall also be obliged to give appropriate opportunity to the petitioner to lead evidence. After hearing the petitioner, he shall pass a speaking order in accordance with law. The Collector shall conclude the inquiry and pass his final order within a period of nine months from the date of appearance of the petitioner. The petition is allowed to the extent indicated above. Rule is made absolute accordingly. No costs.

11. It is, however, made clear that the petitioner would not be entitled to any further notice for his appearance and if on 19/2/2007, he, either personally or through his representative, does not appear before the Collector, then, the Collector shall be free to proceed ex-parte and would be entitled to make an order in accordance with law.

(R.S. GARG, J.)

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